

FCC MAIL SECTION
Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 17 3 23 PM '93

MM Docket No. 93-166
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b), RM-8242
Table of Allotments,
FM Broadcast Stations.
(Rexburg, Idaho and
Afton, Wyoming)

**NOTICE OF PROPOSED RULE MAKING
AND ORDER TO SHOW CAUSE**

Adopted: June 7, 1993; Released: June 22, 1993

Comment Date: August 13, 1993
Reply Comment Date: August 30, 1993

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Communicast Consultants, Inc. ("petitioner"), permittee of Station KRXX-FM, Channel 251C3, Rexburg, Idaho, seeking the substitution of Channel 251C1 for Channel 251C3 and the modification its construction permit to specify the higher powered channel. In order to accomplish the upgrade, petitioner also requests the substitution of Channel 254A for Channel 252A at Afton, Wyoming, and the modification of Station KRSV(FM)'s license to specify the new channel. Petitioner states its intention to apply for the channel, if allotted.

2. We believe the public interest would be served by proposing the substitution of Channel 251C1 for Channel 251C3 at Rexburg, Idaho, and Channel 254A for Channel 252A at Afton, Wyoming because this proposal could enable Station KRXX-FM to expand its coverage area. Channel 251C1 can be substituted for Channel 251C3 at Rexburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 32.2 kilometers (20 miles) south of the community.¹ In addition, Channel 254A can be substituted for Channel 252A at Afton, Wyoming at the authorized site of Station KRSV(FM).²

3. In accordance with Section 1.420(g)(3) of the Commission's Rules, we shall propose to modify Station KRXX-FM's construction permit without entertaining other expressions of interest in the use of Channel 251C1 at Rexburg, or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties. In addition, we shall direct an *Order to Show Cause* to the licensee of Station KRSV(FM) at Afton, Wyo-

ming, as to why its license should not be modified to specify operation on Channel 254A in lieu of Channel 252A.

4. Whenever an existing licensee or permittee is ordered to change frequencies to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. See *Circleville, Ohio*, 8 FCC 2d 159 (1967). Petitioner has stated its willingness to reimburse the licensee of Station KRSV(FM) for its reasonable costs associated with moving to Channel 254A.

5. The Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

	Channel No.
City	Present Proposed
Rexburg, Idaho	251C3 251C1
Afton, Wyoming	252A 254A

6. IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Western Wyoming Radio, licensee of Station KRSV(FM), Channel 252A, Afton, Wyoming, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 254A in lieu of Channel 252A.

7. Pursuant to Section 1.87 of the Commission's Rules, Western Wyoming Radio, may, not later than August 13, 1993, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Western Wyoming Radio, to furnish additional information. If Western Wyoming Radio, raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no H& written statement is filed by the date referred to above, Western Wyoming Radio, will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission SHALL SEND by Certified Mail, Return Receipt Requested, a copy of this *Order* to the following: Western Wyoming Radio, P.O. Box 1210, Afton, Wyoming 83110.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before August 13, 1993, and reply comments on or before August 30, 1993, and are advised to read the Appendix for the

¹ The coordinates for Channel 251C1 at Rexburg are North Latitude 43-32-34 and West Longitude 111-53-07.

² The coordinates for Channel 254A at Afton are North Latitude 42-51-02 and West Longitude 110-58-46.

proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Marvin Rosenberg
Kathleen Victory
Fletcher, Heald & Hildreth
1300 North 17th Street
11th Floor
Rosslyn, VA 22209
(Attorney for Petitioners)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Com-

mission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.